IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3513 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

K A MAKRANI

Versus

STATE OF GUJARAT

Appearance:

MR DF AMIN for Petitioner No. 1
MR KM PARIKH AGP for RespondentS No. 1 and 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 10/07/2001

ORAL JUDGEMENT

The petitioner was working as a Range Forest Officer at Meghraj in Sabarakantah District. The respondent no. 2 issued charge sheet dated 4-12-1981 against the petitioner for charges of negligence etc.

and the charges were framed relating to year 1977-78 and 1978-79. The defence statement was filed on 16-8-1983 by the petitioner. The Deputy Conservator of Forest was appointed as a Special Officer for departmental inquiry to hold regular departmental inquiry by the order dated 24-1-1984. During pendency of the proceeding the Conservator of Forest, Meshana in consultation with the respondent no. 2 - Principal - Chief Conservator of Forest, Gujarat State issued the order dated 3-2-1984 prematurely retiring the petitioner from service with effect from 27-2-1984. It is stated in this order dated 3-2-1984 that the proceedings under Rule 189 of the Bombay Civil Services Rules will be taken up in case the charges of irregularities are proved and the appropriate authority will take steps under Rule 189 of the B.C.S. Rules 1959 for deduction of pension and gratuity amount. The the order for premature retirement was challenged in this Court by way of filing Special Civil Application No. 1127 of 1984 and that petition was dismissed. The Principal Chief Conservator of Forest inquired into the matter and came to a conclusion that the charges no. 3 and 4 were partly proved and it was ordered that the pay which the petitioner was receiving in the scale of Rs.475-20-615-EB-675-25-750 at the time of his retirement should be reduced by five successive stages of the original pay scale thereby reduction in pay which was received at the time of retirement equal amount be withheld from the pension. Learned counsel for the petitioner challenged the order mainly on two grounds; (i) that it does not clarify as to what amount was to be deducted from the pension of the petitioner and (ii) the impugned order has not been passed by the appropriate authority under Rule 189 of the B.C.S. Rules, 1959.

2. Heard the learned counsel for the parties and perused the material on record.

3. The impugned order says reduction of payment in five successive stages in original pay which was received at the time of retirement equal amount was directed to be withheld from the pension. The amount can be specified and this order says quantification of the amount to be reduced from the pension, is the amount in five successive stages. Thus, I do not find any substance in the contention raised by the learned counsel for the petitioner in this respect.

4. So far as the second contention of the learned counsel for the petitioner is concerned, Rule 189 of the B.C.S.R. 1959 says "Good conduct is an implied condition of every grant pension. Government may withhold or

withdraw a pension or any part of it is the pensioner he convicted of serious crime or he found to have been guilty of grave misconduct either during or after the completion of his service provided that before any order to this effect is issued the procedure referred to in Note 1 to Rule 33 of the Bombay Civil Services Conduct, Discipline and Appeal Rules shall be followed."

5. On the basis of wording of aforesaid Rule 189 of the B.C.S.R. 1959, the contention of the learned counsel for the petitioner is that the order can also be passed by the Government and not by any authority subordinate to the Government. In the present case, the impugned order has been passed by the Principal - Chief Conservator of Forest, Gujarat, who does come within the word "Government" contemplated under Rule 189 of B.C.S. Rules, 1959. The order could have been passed by the Governor of the State or on his behalf or at least by the Secretary of the department concerned, or by any authority to whom the powers under Rule 189 have been delegated.

6. Learned A.G.P. could not point out anything to show that the power under Rule 189 of the B.C.S.R. 1959 are to be exercised by Dy. Conservator of Forest or the powers have been delegated to the Principal Chief Conservator of Forest. Learned A.G.P. could not show any authority or any Government Resolution passed in this respect that the powers to be exercised under Rule 189 of the B.C.S.R. 1959 have been delegated to the Principal Chief Conservator of Forest. As such, it is contended that the powers under Rule 189 of the B.C.S.R. 1959 have not been delegated to be exercised by the Principal Chief Conservation of Forest. In absence of any notification/Government Resolution or any Rule or Regulation in this respect, the impugned order could not have been passed by the Principal - Chief Conservator of Forest under aforesaid Rule 189. That order would amount to without any authority of law and is bad in law. Therefore, this petition deserves to be allowed and the impugned order dated 17-3-1987 whereby the pension of the petitioner has been directed to be reduced, is liable to be quashed and set aside.

7. Accordingly, this petition is allowed and the impugned order dated 17-3-1987 Annexure-B is hereby quashed and set aside. Rule is made absolute with no order as to costs. The respondents are directed to release the entire pension which has been withdrawn by the impugned order if not paid pursuant to the impugned order within a period of three months from the date of

presentation of a certified copy of this order or receipt of writ of this Court which ever is earlier. However, it would be open to the department - respondent concerned or appropriate authority of the respondents to take steps and pass appropriate order in accordance with law under Rule 189 of the B.C.S.R., 1959.

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/JVSatwara/